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No. 05-1074

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IN THE

Supreme Court of the United States

LILLY M. LEDBETTER,
Petitioner,

v.

GOODYEAR TIRE AND RUBBER COMPANY, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF *AMICI CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL AND THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT IN SUPPORT OF RESPONDENT

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The Equal Employment Advisory Council and the Society for Human Resource Management respectfully submit this brief as *amici curiae*.[1] Letters of consent from both parties have been filed with the Court. The brief urges this Court to affirm the decision below, and thus supports the position of the Respondent, Goodyear Tire and Rubber Company, Inc.

[1] Counsel for *amici curiae* authored the brief in its entirety. No person or entity, other than the *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

INTEREST OF THE *AMICI CURIAE*

The Equal Employment Advisory Council (EEAC) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of employment discrimination. Its membership includes over 320 major U.S. corporations. EEAC's directors and officers include many of industry's leading experts in the field of equal employment opportunity. Their combined experience gives EEAC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of equal employment policies and requirements. EEAC's members are firmly committed to the principles of nondiscrimination and equal employment opportunity.

The Society for Human Resource Management (SHRM or the Society) is the world's largest association devoted to human resource management. Representing more than 210,000 individual members, the Society's mission is to serve the needs of HR professionals by providing the most essential and comprehensive resources available. As an influential voice, the Society's mission is also to advance the human resource profession to ensure that HR is recognized as an essential partner in developing and executing organizational strategy. Founded in 1948, SHRM currently has more than 550 affiliated chapters within the United States and members in more than 100 countries.

Amici's members are employers or representatives of employers subject to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, and other equal employment statutes and regulations. *Amici's* members, therefore, have a direct and ongoing interest in the issues presented in this case.

EEAC and SHRM seek to assist this Court by highlighting the impact its decision may have beyond the immediate concerns of the parties to the case. Accordingly, this brief brings to the attention of this Court relevant matters that the

parties have not raised. Because of their experience in these matters, EEAC and SHRM are well situated to brief this Court on the concerns of the business community and the significance of this case to employers.

STATEMENT OF THE CASE

Goodyear hired Lily Ledbetter as a "Supervisor," later called an "Area Manager," at its Gadsden, Alabama tire plant in 1979. Pet. App. 5a. An Area Manager is a salaried, nonunion, floor-level manager who supervises one shift of workers within a section of the plant. *Id.* at 3a.

Managerial employees' salaries are based on a system of annual merit-based raises, based on each employee's performance ranking as compared to other managers. *Id.* At the beginning of her employment, Ledbetter was paid the same salary as other male supervisors at the Gadsden plant. *Id.* at 4a, 12a. Throughout her nineteen-year career with the company, however, her performance almost always ranked at or near the bottom of Area Managers, and her merit increases were calculated accordingly. *Id.* at 5a. She last received a merit increase in 1995. *Id.* at 9a.

In late 1996, Ledbetter was slated for layoff as part of a plant-wide reduction in force, but remained employed through 1997 as a substitute for other Area Managers on long-term medical leave. *Id.* at 7a. She was not considered for a raise in 1997 because she was slated for layoff. *Id.* at 8a n.4. She received a low ranking in 1998 for her 1997 performance and again was denied a raise. *Id.* at 9a.

In March of 1998, Ledbetter filed an intake questionnaire with the Equal Employment Opportunity Commission and later a formal charge of discrimination. *Id.* Eventually, Ledbetter also brought a Title VII lawsuit, alleging that she had received a discriminatorily low salary as an Area Manager because of her sex. *Id.* at 10a. The jury ruled in favor of

Ledbetter and recommended substantial back pay and mental anguish awards plus almost $3.3 million in punitive damages, which the judge cut back to $300,000 due to the statutory cap on Title VII damages. *Id.* at 10a-11a. The trial court declined to overturn the verdict, and Goodyear appealed to the Eleventh Circuit. *Id.* at 11a.

On appeal, the Eleventh Circuit reversed the lower court's decision, holding that Ledbetter could challenge at most the pay decisions made in 1997 and 1998, and that Ledbetter had not shown that either decision was discriminatory. *Id.* at 27a-28a, 15a. In so ruling, the court relied on this Court's decision in *National Railroad Passenger Corp. (Amtrak) v. Morgan*, 536 U.S. 101 (2002), which held that a plaintiff can sue for "discrete acts" of discrimination only to the extent that they occur within the limitations period. *Id.* at 19a. Ledbetter's pay claims, the Eleventh Circuit concluded, are necessarily based on pay *decisions*, at least in cases like this where the employer conducts annual salary reviews, and those pay decisions are "discrete acts" under *Morgan*. *Id.* at 17a-18a. As long as the plaintiff received a discriminatorily low paycheck during the limitations period, the court reasoned, the plaintiff can look back as far as the most recent underlying decision—but no further. *Id.* at 24a.

Applying this analysis to Ledbetter's case, the Eleventh Circuit concluded that she had failed to prove that discrimination was the reason she was denied a raise in either 1997 or 1998. *Id.* at 30a-31a. In 1998, the two male employees who were ranked almost as low as Ledbetter, and one ranked lower, did not receive raises either. *Id.* at 31a. In 1997, Ledbetter did not receive a raise because she was about to be laid off, and there was no evidence that she was improperly selected for layoff. *Id.* at 32a-33a. Accordingly, the Eleventh Circuit reversed the lower court's judgment and ruled for Goodyear. *Id.* at 37a. Ledbetter petitioned

this Court for a writ of certiorari, which was granted on June 26, 2006.

SUMMARY OF ARGUMENT

Title VII requires an aggrieved individual to file an administrative charge of discrimination with the Equal Employment Opportunity Commission within 180 or 300 days of the allegedly discriminatory event. 42 U.S.C. § 2000e-5(e). Under this Court's decisions in *National Railroad Passenger Corp. (Amtrak) v. Morgan*, 536 U.S. 101 (2002) and *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977), the statute of limitations for filing a claim of pay discrimination begins to run when a decision affecting pay is made—and does not, as Ledbetter argues, continue to run years later merely because the effects of that decision may still be felt through periodic paychecks.

Virtually all forms of employment discrimination have some consequential, and to that extent, continuing effect on their victims. But the decisions of this Court unequivocally establish that continuing effects alone do not insulate alleged acts of discrimination from the necessity for timely challenge. *Morgan*, 536 U.S. at 114; *Evans*, 431 U.S. at 557. Ledbetter's reliance on the Court's decision in *Bazemore v. Friday*, 478 U.S. 385 (1986), to argue the contrary is misplaced. Because the facially discriminatory salary structure at issue in *Bazemore* was a *present* violation of the law that could be challenged "at any time," it is distinguishable from this case, where no facially discriminatory pay structure is alleged and the challenged employment actions are discrete performance appraisals used to support merit-based pay decisions. *Lorance v. AT&T Techs., Inc.*, 490 U.S. 900, 913 n.5 (1989) (*superseded on other grounds by* 42 U.S.C. § 2000e-5(e)(2)); *Bazemore*, 478 U.S. at 396 n.6.

If this Court were to permit pay discrimination plaintiffs to challenge their current pay rate at any time, regardless of

when decisions affecting their pay were made, the result would be the virtual elimination of a statute of limitations period for any employment decision that either directly or indirectly affected the person's pay. This would impose an undue burden on employers to defend stale claims long after "evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 428 (1965) (citation omitted).

Moreover, expanding the limitations period well beyond 300 days in cases involving alleged pay discrimination will severely prejudice employers who reasonably have relied on EEOC regulations permitting employers to lawfully destroy employment records after one year, unless a charge has been filed. 29 C.F.R. § 1602.14. These employers will not have any documents to support pay decisions they made in the past, thus undermining their ability to defend a subsequent pay discrimination claim. Moreover, going forward, employers would be placed under the extraordinary burden of having to save *all* employment records forever, because they would not be able to anticipate which employment decisions would generate pay discrimination charges.

ARGUMENT

I. UNDER THIS COURT'S DECISIONS IN *MORGAN* AND *EVANS*, THE STATUTORY LIMITATIONS PERIOD ON A CLAIM OF PAY DISCRIMINATION BEGINS TO RUN WHEN A DECISION AFFECTING PAY IS MADE

A. Title VII Requires An Aggrieved Individual To File An Administrative Charge Within 180 Or 300 Days Of An Allegedly Discriminatory Discrete Event

Title VII "specifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit." *Alexander v. Gardner-Denver*

Co., 415 U.S. 36, 47 (1974). One of these prerequisites is that aggrieved individuals must file an administrative charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within one hundred and eighty days after the alleged discriminatory event. 42 U.S.C. § 2000e-5(e).[2] Title VII makes only one exception to this requirement. Where the aggrieved individual has filed a discrimination charge with a state or local enforcement agency with authority to grant or seek relief, he or she has "three hundred days after the alleged unlawful employment practice occurred" to file an EEOC charge. 42 U.S.C. § 2000e-5(e). No other exceptions extend the length of Title VII's limitations period.

Congress mandated that the time limitations would start with the date of the "alleged unlawful employment practice." 42 U.S.C. § 2000e-5(e); *Delaware State Coll. v. Ricks*, 449 U.S. 250, 259 (1980) (internal quotation omitted). In *National Railroad Passenger Corp. (Amtrak) v. Morgan*, 536 U.S. 101 (2002), this Court clarified that this means that a Title VII plaintiff who challenges a "discrete" discriminatory act (such as discipline, discharge, promotion, transfer, and hiring), first must file an EEOC charge within 180 or 300 days of when the act "occurred"—or, as *Morgan* instructs, on the day that it "happened."[3] *Id.* at 110, 113.

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[2] The second prerequisite is that an individual must file suit within ninety days of receiving a notice of the right to sue from the EEOC. 42 U.S.C. § 2000e-5(f).

[3] *Morgan* distinguished hostile work environment claims from claims involving "discrete" acts, explaining that a hostile work environment generally involves repeated conduct that occurs over a period of time—perhaps even years. *Morgan* at 115. While a single act may not be sufficient to support a claim of hostile environment discrimination under Title VII, the Court said, the cumulative total may. *Id.* Therefore, this Court interpreted Title VII as giving individuals 180 or 300 days from *any* act that forms part of the hostile environment claim to file an EEOC charge of harassment. *Id.* at 117-18.

Moreover, over the years this Court repeatedly has refused to sanction arguments in favor of lengthening the limitations period for discrete acts in certain cases beyond 180/300 days. Most recently, for example, *Morgan* rejected the notion that a series of discrete acts could work together to constitute a single unlawful employment practice, noting that discrete acts are "easy to identify" and "are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Id.* at 113-14. Morgan had challenged as discriminatory several disciplinary actions, including written and verbal counselings and suspensions from work without pay, as well as the denial of training opportunities and his eventual termination. The Court refused to allow Morgan to combine events that occurred outside Title VII's limitations period with more recent events as a "continuing violation," ruling that any alleged discrete acts of discrimination falling outside of the applicable filing period were dead for purposes of bringing a valid Title VII claim, although they could be used "as background evidence in support of [the] timely claim." *Id.* at 113.

Prior to *Morgan*, this Court held in *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977), that the present "effects" of past discriminatory acts also are not actionable under Title VII and that the law instead requires a plaintiff to show a "present *violation*" of the law within the limitations period. *Id.* at 558. In *Evans*, the plaintiff was forced to resign her position as a flight attendant for violating a "'no marriage' rule" that later was found to be discriminatory. *Id.* at 555. When she was rehired four years later (after the company had abandoned the "no marriage" rule), her seniority date did not reflect her earlier employment because company policy counted only continuous time-in-service, which resulted in less pay and benefits. *Id.* The plaintiff had not filed a timely administrative charge over her resignation, but tried to revive the claim after her rehire by alleging that the company's seniority system gave "present effect to the past illegal act and

therefore perpetuate[d] the consequences of forbidden discrimination." *Id.* at 557.

This Court rejected Evans' claim as untimely even though the discharge decision continued to have an effect on her pay and benefits. *Id.* at 558. According to the ruling, "emphasis should not be placed on mere continuity," but rather on "whether any present *violation* exists." *Id.* There was no present violation, this Court explained, because "[a] discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed." *Id.* In other words, it is "merely an unfortunate event in history which has no present legal consequences." *Id.*

Likewise, *Delaware State College v. Ricks*, 449 U.S. 250 (1980), held that the college's decision to deny tenure was the discriminatory act that marked the beginning of the limitations period, even though the plaintiff did not feel the effects of the decision until his termination. Again, the *Ricks* Court reminded litigants that "[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination." *Id.* at 257 (citing *Evans*).

Accordingly, the law is well settled that a Title VII plaintiff must challenge a discriminatory discrete event within the 180/300 day time frame established by Congress.

B. Employment Decisions That Affect A Person's Pay Are Discrete Events And Must Be Challenged Within The 180/300-Day Time Frame

To date, this Court has not treated decisions that affect a person's pay any differently than decisions that do not for the purpose of ascertaining the timeliness of a claim. For example, the Court permitted Morgan to challenge a decision to deny him training opportunities (which presumably had—or could have—effected his pay), but only because the

decision occurred within the statute of limitations period. *Morgan* at 114. On the other hand, because Evans had been discharged pursuant to a discriminatory policy outside the limitations period, she could not challenge her discharge, even though it had a continuing effect on her pay within the limitations period. *Evans* at 557.

Ledbetter's case falls squarely within this line of cases. In her complaint, Ledbetter challenges discrete acts—annual performance evaluations—that directly effected her eligibility for pay raises. Pet. for Writ of Cert. at 4 ("This pay differential was accomplished through discriminatory annual evaluations and pay raises"). Goodyear determined the salaries of Area Managers using a system of annual merit-based raises, with any award determined by the employee's performance in relation to other employees. Ledbetter's challenge focuses on these evaluations, which she claims did not "accurately reflect the true quality of her work" or were deliberately "falsified" and, therefore, resulted in her receiving less pay. Pet. Brief at 5.

Under *Morgan*, each of these performance evaluations constitutes a separate "discrete act" that triggers the statute of limitations period. *Miller v. New Hampshire Dep't of Corrs.*, 296 F.3d 18, 22 (1st Cir. 2002) (allegedly discriminatory transfer, letter of warning, and performance evaluation were discrete acts and, therefore, time-barred). Although some courts have said the limitations period for challenging an adverse performance evaluation will not run unless some tangible, adverse consequence results from it (such as discipline, discharge or loss of pay), a Title VII plaintiff still must file a timely charge *at least as soon* as the implications of the evaluation have crystallized. As the Court of Appeals for the First Circuit explained in *Thomas v. Eastman Kodak Co.*, 183 F.3d 38 (1st Cir. 1999):

> [E]mployees do not have an unfettered right to reach back to challenge previous evaluations. The key is

> whether those evaluations had tangible, concrete effects at the time they were conducted. If the evaluation did cause tangible, concrete harm, the notice standard requires the injured employee to promptly bring suit to recover for those harms. Failure to do so will render any later claim regarding those particular harms time-barred. If, for example, a poor job evaluation resulted in a denial of a salary increase, notice of the denial would mark the accrual point for a pay inequity claim.

Id. at 50 and n.8.

In this case, Ledbetter felt the "tangible, concrete effects" of her performance evaluations each time an evaluation resulted in the award of a less-than-desired salary increase, which would have occurred within the same performance year. Once Ledbetter became aware of this "tangible, concrete harm," she should have promptly (within 180 days) filed a charge with the EEOC. Ledbetter failed to do this, instead choosing to wait until the end of her nineteen-year career with the company to debate the validity of those evaluations and the effects on her pay.

Because Ledbetter elected not to file a timely administrative charge challenging her performance evaluations (other than the last one), she has forfeited the right to challenge those earlier evaluations, even if they had continuing effects on her pay over the course of her career. *Evans* at 558.

C. Because The Facially Discriminatory Salary Structure At Issue In *Bazemore* Was A "Present Violation" Of The Law That Could Be Challenged "At Any Time," It Is Distinguishable From This Case

Ledbetter attempts to circumvent this Court's jurisprudence by arguing that cases involving discriminatory pay are fundamentally different from cases involving other types of

discrete employment actions (like demotion or discharge) for the purpose of determining timeliness. In a disparate pay case, Ledbetter contends, the "unlawful employment practice" at issue is not the *decision* to pay someone less, but the actual *payment* of a discriminatorily depressed wage, even if the pay disparity arose from decisions made outside the limitations period. Pet. Brief at 22-23 ("Title VII prohibits discrimination 'with respect to . . . compensation'" [and] not "with respect to 'compensation *decisions*.'") (citation omitted). To support her position, Ledbetter removes from context this Court's statement in *Bazemore v. Friday*, 478 U.S. 385 (1986), that "[e]ach week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII." *Id.* at 395. From this she concludes that "in a disparate pay case, each discriminatory paycheck constitutes an independent unlawful employment practice in violation of Title VII, even if it simply implements a discriminatory pay decision made outside the limitations period." Pet. Brief at 16.

Ledbetter's reliance on *Bazemore* is misplaced. In *Bazemore*, the employer instituted racially segregated work facilities prior to Title VII's passage, in which black employees were paid less than whites under a facially discriminatory pay structure. *Bazemore*, 478 U.S. at 394. Although the employer merged the facilities in 1965, and adjusted the pay of black employees, pre-Act salary disparities were not fully corrected. *Id.* at 395. The Fourth Circuit had ruled that because the pay structure was initiated pre-Act, discriminatory differences in pay did not have to be eliminated post-Act, and this Court reversed. *Id.*

The *Bazemore* case, unlike this one, however, was a "pattern or practice" claim involving the continued application of a *facially* discriminatory salary structure. The fact that the employer instituted the pay structure pre-Act did not insulate it from liability post-Act, this Court said, because by

continuing to use a pay structure that admittedly paid employees differently on the basis of race, it had engaged in a *present* violation of Title VII. *Id.* Accordingly, as the Court later explained in *Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900 (1989) (*superseded on other grounds by* 42 U.S.C. § 2000e-5(e)(2)), "[e]ach week's paycheck [that] deliver[ed] less to a black than to a similarly situated white" was actionable in *Bazemore* because a facially discriminatory system "discriminates each time it is applied." *Id.* at 913 n.5 (citations and internal quotations omitted). Therefore, it can be challenged "at any time." *Id.* at 913. Indeed, the *Bazemore* Court was careful to note, consistent with *Evans*, that it was "in no sense giv[ing] legal effect to pre-[Act] actions," or acts otherwise not actionable, but instead was "focuse[d] on the present salary structure." *Id.* at 396 n.6.

In Ledbetter's case, there is no facially discriminatory salary structure. Nor does she allege that one exists. Rather, Ledbetter disputes the accuracy of discrete performance evaluations conducted by different supervisors over a period of almost two decades and consequentially the effects they had on her pay. *Bazemore* is simply inapposite.

Furthermore, Ledbetter's unique limitations theory is contrary to the law of *Evans*. Virtually all forms of employment discrimination have some consequential, and to that extent, continuing effects on their victims. Indeed, were Ledbetter's claims proved, she might well be able to show her appraisals (and resultant pay) have had consequences to her career extending for years—and possibly even beyond her employment with Goodyear. But the teaching of this Court's decision in *Evans* unequivocally establishes that continuing effects alone do not insulate alleged acts of discrimination from the necessity for timely challenge. By measuring the 180-day time limit from the date of the alleged discriminatory act, all Title VII plaintiffs are placed on an equal footing.

Ledbetter's misapplication of *Bazemore* should be rejected.

II. A POLICY THAT PERMITS DISCRIMINATION PLAINTIFFS TO CHALLENGE CURRENT PAY, AS OPPOSED TO DECISIONS AFFECTING PAY, WILL EFFECTIVELY ELIMINATE THE LIMITATIONS PERIOD FOR ALL PAY-RELATED DECISIONS—IMPOSING AN UNDUE BURDEN ON EMPLOYERS TO DEFEND AGAINST STALE CLAIMS

A. Allowing Pay Discrimination Plaintiffs To Challenge Current Pay At Any Time, Without Regard To When Decisions Affecting Their Pay Were Made, Would Effectively Result In The Elimination Of A Limitations Period For Any Pay-Influencing Employment Decision

Inherent in Ledbetter's misconstruction of Title VII's time limitation is a perpetuation theory wholly at odds with the Title VII policy that favors limiting the life of claims. Congress deliberately restricted the rights of individuals to raise Title VII claims when it set the length of the limitations period. In a related context, this Court cautioned against disregarding this restriction:

> By choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination . . . [I]n a statutory scheme in which Congress carefully prescribed a series of deadlines measured by numbers of days—rather than months or years—we may not simply interject an additional . . . period into the procedural scheme. We must respect the compromise embodied in the words chosen by Congress. It is not our place simply to alter the balance struck by Congress in procedural statutes by favoring one side or the other in matters of statutory construction.

Mohasco Corp. v. Silver, 447 U.S. 807, 825-26 (1980) (footnote omitted); *see also International Union of Elec. Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 240 (1976)

("Congress has already spoken with respect to what it considers acceptable delay when it established a 90-day limitations period, and gave no indication that it considered a 'slight' delay followed by 90 days equally acceptable. In defining Title VII's jurisdictional prerequisites 'with precision,' Congress did not leave to courts the decision as to which delays might or might not be 'slight'") (citation omitted).[4]

This Court concluded in *Mohasco* that in choosing the length of Title VII's limitations period, Congress intentionally risked leaving some victims of discrimination without a remedy in order to further its goal of precluding stale claims, stating: "[I]t seems clear that the [limitations] provision to some must have represented a judgment that most genuine claims of discrimination would be promptly asserted and that the costs associated with processing and defending stale or dormant claims outweigh the federal interest in guaranteeing a remedy to every victim of discrimination." 447 U.S. at 820. In light of Congress's decision, this Court advised: "[I]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Id.* at 826.

Yet if this Court holds, as Ledbetter asks, that pay discrimination plaintiffs may challenge their current pay rate at any time, regardless of when decisions affecting their pay were made, the result will be the virtual elimination of a statute of limitations period for any employment decision that either directly or indirectly affected the person's pay. According to Ledbetter's logic, for example, an employee would be able to reach back well beyond the statutory 180/300 day limitations period to challenge the denial of a

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[4] The 1972 amendments to Title VII enlarged the limitations period to 180 days. (codified as amended at 42 U.S.C. § 2000e-5(e)).

training opportunity or more challenging work assignments if, as a result of the denial, the employee received a smaller pay increase that year. Likewise, an employee could do as Ledbetter has done and wait almost two *decades* to challenge a performance appraisal that formed the basis of a merit-based raise decision.

Even if the employee believed the pay-influencing employment action was discriminatory at the time it occurred (as Ledbetter did at the time she received her appraisals), she could remain silent without sacrificing her claims. The employer would not have any inkling during the employee's career of the perception of discrimination, but it still would have to defend each employment action many years after it occurred. In other words, the mere issuance of a paycheck would "open[] the door for a full inquiry into the motivations of every person who ever made a decision contributing to the [employee's] pay level." Pet. App. 22a.

B. Exempting Pay Discrimination Plaintiffs From The Congressionally-Mandated Statute Of Limitations Period Would Impose An Undue Burden On Employers To Defend Against Stale Claims

Employers must be permitted to operate without the constant pressure that flows from the uncertainty over whether they will have to defend past employment decisions against challenges in the distant future. The purpose of statutes of limitations is to avoid precisely the prejudice to employers that results from defending stale claims. Indeed, they are "designed to assure fairness to defendants" and to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 428 (1965) (citation omitted). The interest of an individual

who fails to undertake the "minimal" step of filing a charge to preserve his Title VII claim must, therefore, give way to the interest of avoiding stale claims. *See Ricks*, 449 U.S. at 256-57 ("[t]he limitations periods, while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment decisions that are long past") (citations omitted); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-64 (1975) ("the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones").

Even the EEOC recognized the right of employers to some measure of finality when it set the retention period for employers to keep certain personnel and employment records under Title VII at one year from the date the record is made or the personnel action involved occurs, whichever is later, unless a charge has been filed. 29 C.F.R. § 1602.14. The one-year retention period means employers will not destroy relevant documents as part of routine file maintenance before an individual has had the opportunity to file a charge of discrimination with the EEOC. Because Title VII gives some aggrieved individuals up to 300 days from the date of the allegedly discriminatory event to file such a charge, an employer will know whether a particular employment action is the subject of a charge before it destroys any relevant documents.

Expanding the limitations period well beyond 300 days in cases involving alleged pay discrimination, as Ledbetter essentially asks this court to do, will severely prejudice employers who reasonably have relied on the regulation lawfully to destroy relevant documents. The employer will not have any documents to support pay decisions it took more than one year ago, which will hamper drastically its ability to

defend itself against a subsequent pay discrimination claim. Moreover, going forward, such a ruling would effectively require employers to save *all* employment records forever, because they would not be able to anticipate which employment decisions would generate pay discrimination charges or when. This response, however, places an undue burden on the employer and is one the EEOC expressly rejected by limiting Title VII's recordkeeping requirements to one year, unless a charge has been filed.

This Court should reject Ledbetter's plea to unravel the very important protection Title VII's statute of limitations affords employers against stale claims.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

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